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No. 80-990
IN THE

Supreme Court of the United States

October Term, 1980

CLARENCE E. CABELL, in his official capacity as Acting Chief Probation Officer of Los Angeles County; JACQUALINE HASENSTAB, in her official capacity as Personnel Officer for the Los Angeles County Probation Department; GORDON T. NESVIG, in his official capacity as Chief Personnel Officer of the County of Los Angeles; and the COUNTY OF LOS ANGELES, a body politic,

Appellants,

vs.

JOSE CHAVEZ-SALIDO, RICARDO BOHORQUEZ and PEDRO LUIS YBARRA,

Appellees.

On Appeal From the United States District Court for the Central District of California.

Brief for Jose Chavez-Salido, et al., Appellees.

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Appellants,

vs.

JOSE CHAVEZ-SALIDO, RICARDO BOHORQUEZ and PEDRO LUIS YBARRA,

Appellees.

Brief for Jose Chavez-Salido, et al., Appellees.

I.
SUMMARY OF ARGUMENT.

California Government Code Section 1031(a) ["Section 1031(a)"] discriminates against legally admitted resident aliens, in violation of the Fourteenth Amendment to the Constitution of the United States, by excluding aliens from a wide range of public employment positions. Although those positions are all labeled as "peace officer" positions, they include such widely divergent jobs as messengers, local park rangers, and deputy probation officers. Plaintiffs/

appellees ("plaintiffs") were unconstitutionally denied employment in Los Angeles County as deputy probation officers because they were not United States citizens, as required by Section 1031(a).

Aliens are a discrete and insular minority for purposes of Fourteenth Amendment analysis. Any state statute which discriminates against aliens is suspect. *Graham v. Richardson*, 403 U.S. 365 (1971); *Sugarman v. Dougall*, 413 U.S. 634 (1973); *In Re Griffiths*, 413 U.S. 717 (1973); *Examining Board v. Flores de Otero*, 426 U.S. 572 (1976); *Nyquist v. Mauclet*, 432 U.S. 1 (1977). Therefore, the citizenship requirement of Section 1031(a) must be supported by a compelling state interest, and subjected to strict judicial scrutiny.

The defendants/appellants ("County") argue that the interest served by Section 1031(a) is the preservation of the County's "political community." This Court has indicated that a state does have a compelling interest in preserving its "political community;" however, that interest is served by a citizenship requirement only if the requirement is limited to "officers who participate directly in the formulation, execution, or review of broad public policy" since such officers "perform functions that go to the heart of representative government," and only if the statute is "precisely drawn in light of the acknowledged purpose." *Sugarman v. Dougall, supra*, 413 U.S., at 647 and 643.

The County's argument that the citizenship requirement of Section 1031(a) meets the standards of *Sugarman* does not withstand strict scrutiny. Deputy probation officers, who are required by Section 1031(a) to be citizens, do not perform functions that "go to the heart of representative government." The only two jobs which this Court has held meet that stringent test are state troopers [*Foley v. Connelie*, 435 U.S. 291 (1978)] and public school teachers [*Ambach*

v. Norwick, 441 U.S. 68 (1979)]. State troopers and teachers perform vital government functions, without any intervening supervision by other members of the political community. They exercise their authority in direct contact with the vast majority of the entire state population. And they are perceived by citizens as potent symbols of the American way of life and our shared values and traditions. Probation officers, on the other hand, are mere government functionaries. They have very limited duties and responsibilities. They do investigations and make reports to the courts, and exercise only perfunctory control over probationers. Their clientele is very small; they do not deal with the population at large. They are neither symbols nor purveyors of the shared values and traditions of this country.

Section 1031(a)'s citizenship requirement cannot withstand strict scrutiny and clearly violates the Fourteenth Amendment as the requirement is applied to probation officers. In addition, in the full range of its application Section 1031(a) violates the Fourteenth Amendment because it is not precisely crafted and narrowly written to limit it to those positions which do go to the heart of representative government. Section 1031(a) requires all "peace officers" to be citizens. Other sections of California law define over seventy job classifications as "peace officers," including voluntary fire wardens, investigators of the Board of Dental Examiners, employees of the State Department of Parks and Recreation, local park rangers, and messengers of the Treasurer's office. The fact that the California legislature did not adequately craft and precisely limit the citizenship requirement is underscored by the existence of many other statutes which inexplicably require citizenship for other public jobs. For example, county and district surveyors, veterinarians, and fish and game wardens are required by state law to be citizens. On the other hand, the state has not

imposed a citizenship requirement where it arguably would be acceptable; public school teachers in California are not required to be citizens. Therefore, Section 1031(a) is unconstitutional when considered alone, and in conjunction with the rest of the state statutory scheme for requiring citizenship of public employees, because it is both overinclusive and inexplicably underinclusive.

The plaintiffs have standing to challenge the excessive reach of Section 1031(a); they are not limited to challenging Section 1031(a) only as it has been applied to them. Plaintiffs obviously have standing within the meaning of Article III of the United States Constitution. They sought County employment and were not hired solely because of the citizenship requirement of Section 1031(a). Further, there is no prudential reason for limiting the scope of plaintiffs' suit to a challenge of Section 1031(a) only as it applies to probation officers. If such a limitation were imposed, then more than seventy additional suits would have to be brought challenging Section 1031(a) before the full scope of the citizenship requirement could be reviewed. Section 1031(a) is not precisely crafted to limit the citizenship requirement to appropriate positions, as is required by the Fourteenth Amendment. These plaintiffs have an adequate stake to raise that issue.

II.
ARGUMENT.

A. Section 1031(a), Which Discriminates Against Aliens, Should Be Subject to Strict Scrutiny, Despite the County's Claim That the Statute Falls Within the "Sugarman Exception."

1. Introduction: Section 1031(a).

This case raises the issue whether a state statute which discriminates in a wide range of public employment posi-

tions against a discrete and insular minority — legally admitted resident aliens — is based on a compelling state interest which can withstand strict judicial scrutiny. Plaintiffs contend that it cannot, and that the statute, California Government Code Section 1031(a), violates the Fourteenth Amendment to the Constitution of the United States.

Section 1031(a) states that California state and local government employees must be United States citizens if they hold any position which is statutorily classified as a "peace officer" position. A separate group of statutes, California Penal Code Sections 830.1 through 830.6, defines a wide variety of public employees, in more than seventy different job classifications, as "peace officers." For example, voluntary fire wardens,[1] investigators of the Board of Dental Examiners,[2] employees of the Department of Parks and Recreation,[3] local park rangers,[4] messengers in the Treasurer's office,[5] and probation officers and deputy probation officers[6] are statutorily classified as "peace officers." Plaintiffs all applied for positions as deputy probation officers with the County of Los Angeles, but were denied employment solely because they were not United States citizens at the time they made their applications.[7]

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[1]Cal. Penal Code § 830.3(c).
[2]Cal. Penal Code § 830.3(b).
[3]Cal. Penal Code § 830.2(h).
[4]Cal. Penal Code § 830.31(b).
[5]Cal. Penal Code § 830.4(d).
[6]Cal. Penal Code § 830.5(a).
[7]Joint Appendix ("J.A.") 76. Plaintiff Chavez-Salido had already applied for citizenship before seeking a position as a Deputy Probation Officer II, Spanish-speaking, but nonetheless was denied employment. J.A. 21.

2. The "Sugarman Exception" Is a Very Limited Exception to the Long-Standing General Rule That Statutes Which Exclude Aliens From Public Employment Cannot Withstand Strict Judicial Scrutiny.

Aliens, who are excluded from our political processes and historically have been subject to invidious discrimination, constitute a discrete and insular minority for purposes of Fourteenth Amendment analysis; state statutes which discriminate against aliens are suspect. *Graham v. Richardson, supra*, 403 U.S., at 372: "[C]lassifications based on alienage, like those based on nationality or race, are *inherently suspect* and subject to *close judicial scrutiny*. Aliens as a class are a prime example of a *'discrete and insular' minority* [citation omitted] for whom such *heightened judicial solicitude* is appropriate." (emphasis added; footnote omitted) (invalidating a state statute denying welfare benefits to aliens). *Accord Sugarman v. Dougall, supra*, (invalidating a state statute requiring all members of New York's competitive class of the state civil service to be citizens); *In Re Griffiths, supra* (invalidating a state court rule requiring attorneys to be citizens); *Examining Board v. Flores de Otero, supra* (invalidating a Puerto Rican statute requiring engineers to be citizens); *Nyquist v. Mauclet, supra* (invalidating a state statute requiring recipients of financial assistance for higher education to be citizens).

If a state statutory scheme discriminates against aliens in public employment, as Section 1031(a) does, the state must show a compelling interest[8] in the discrimination. In addition, the state must show that the statutory scheme is precisely crafted and limited to those job categories for

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[8]The level of interest which a state must show to support a suspect classification has been variously described as "overriding," "important," "compelling," and "substantial." *In Re Griffiths, supra*, 413 U.S., at 722, n. 9.

which United States citizenship is a constitutionally valid prerequisite.

> "In *Graham v. Richardson*, 403 U.S., at 372, we observed that aliens as a class 'are a prime example of a "*discrete and insular*" *minority* (see *United States v. Carolene Products Co.*, 304 U.S. 144, 152-153, n. 4 (1938)),' and that classifications based on alienage are '*subject to close judicial scrutiny*.' And as long as a quarter century ago we held that the State's power 'to apply its laws exclusively to its alien inhabitants as a class is confined within *narrow limits*.' *Takahashi v. Fish Comm'n*, 334 U.S., at 420." *Sugarman v. Dougall, supra*, 413 U.S., at 642. (emphasis added).

Nonetheless in *Sugarman* this Court did note in *dicta* that a state may legitimately limit some public positions[9] to citizens, without running afoul of the Fourteenth Amendment; but the state may do so only if the citizenship requirement applies to "persons holding state elective or important nonelective executive, legislative, and judicial positions, for *officers who participate directly in the formulation, execution, or review of broad public policy perform functions that go to the heart of representative government.*" *Sugarman v. Dougall, supra*, 413 U.S., at 647 (emphasis added). Plaintiffs will refer in this brief to that group of public employment positions from which a state may exclude aliens as the "*Sugarman* exception."

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[9]Aliens' rights to private employment have been protected for nearly a century. In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) this Court invalidated an ordinance which prevented aliens from running laundries. In *Truax v. Raich*, 239 U.S. 33 (1915), a state statute requiring certain businesses to have a workforce composed of at least 80% U.S. citizens was held unconstitutional, as a restriction on aliens' rights "to work for a living in the common occupations of the community. . . ." *Id.*, at 41. More recent decisions invalidating exclusions of aliens from private employment include *In Re Griffiths, supra* (attorneys) and *Examining Board v. Flores de Otero, supra* (engineers).

In 1978, in *Foley v. Connelie, supra,* 435 U.S. 291, this Court applied the *Sugarman* exception for the first time, and held that New York State could constitutionally require state troopers to be United States citizens. This Court determined that state troopers fell within the *Sugarman* exception because their job involved "discretionary decisionmaking, or execution of policy, which substantially affects members of the political community . . .," and because the "police function fulfills a most fundamental obligation of government to its constituency." *Id.*, at 296-97.

One year later, in *Ambach v. Norwick, supra,* 441 U.S. 68, this Court upheld another New York statute which required public school teachers to be United States citizens or to have declared their intention to become citizens. In *Ambach,* public school teachers were determined to be within the *Sugarman* exception because the public education function was "so bound up with the operation of the State as a governmental entity as to permit the exclusion from those functions of all persons who have not become part of the process of self-government." *Id.*, 441 U.S., at 73-74.

State troopers and public school teachers are the only two public employees who have ever been held by this Court to fit within the *Sugarman* exception. The *Sugarman* exception is a narrow one, and should be kept that way.

3. The Sugarman Exception Should Be Narrowly Interpreted Through Application of Strict Judicial Scrutiny.

Since *Graham v. Richardson, supra,* this Court has repeatedly held that aliens are a suspect class for purposes of Fourteenth Amendment analysis. To be consistent with *Graham* and its progeny, *Foley v. Connelie, supra,* and *Ambach v. Norwick, supra,* must be read as cases which the defendant won because it carried its burden of showing a compelling interest in the suspect classification, which

withstood strict judicial scrutiny, by proving that state troopers and teachers perform functions that go to the heart of representative government. Nonetheless, the opinions in *Foley*[10] and *Ambach*[11] are somewhat ambiguous, as they refer to application of a rational basis test, while at the same time citing *Graham*.

If *Foley* and *Ambach* were interpreted as applying the rational basis test to the entire constitutional analysis of the discriminatory state statutes in issue, aliens would appear to be in the anomalous position of comprising a discrete and insular minority, for purposes of Fourteenth Amendment analysis, but not being entitled to the protection of close judicial scrutiny which that status affords other groups. Such an anomalous status would be especially perplexing in light of this Court's statement that classifications based on alienage "are inherently suspect and are therefore subject to strict judicial scrutiny whether or not a fundamental right

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[10] "Following *Graham* a series of decisions has resulted requiring state action to meet close scrutiny to exclude aliens as a class from . . . eligibility for a broad range of public employment, *Sugarman v. Dougall, supra* . . . .

"It would be inappropriate, however, to require every statutory exclusion of aliens to clear the high hurdle of 'strict scrutiny' . . . .

" '[O]ur scrutiny will not be so demanding where we deal with matters firmly within a state's constitutional prerogatives.' *Dougall, supra*, at 648. The State need only justify its classification by a showing of some rational relationship between the interest sought to be protected and the limiting classification."

Foley v. Connelie, supra, 435 U.S., at 295-96.

[11] "The exclusion of aliens from such governmental positions would not invite as demanding scrutiny from this Court. [citations omitted.].

"Applying the rational basis standard, we held last Term that New York could exclude aliens from the ranks of its police force." *Ambach v. Norwick, supra*, 441 U.S., at 74.

is impaired." *Graham v. Richardson, supra,* 403 U.S., at 376.[12]

Thus, *Foley* and *Ambach* must be read to stand for the proposition that a compelling interest test is to be applied to the initial inquiry into whether the challenged statute affects positions that are within the *Sugarman* exception. The strict scrutiny standard of review must be applied to that initial inquiry, and the state should bear a heavy burden of proof and persuasion that the affected positions do fall within the *Sugarman* exception. Only if that burden is met should the rational basis test be applied to the question whether the citizenship requirement is related to the duties of the employees falling within the *Sugarman* exception.

Such a two-step approach would be consistent with all prior decisions of this Court, from *Graham* through and including *Ambach* and *Foley*.[13] Such an approach would also ensure the continued special meaning of this Court's rulings that all groups which comprise discrete and insular minorities are entitled to an extra measure of protection against discrimination under the Fourteenth Amendment.[14]

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[12]The *Graham* approach was reaffirmed in *Nyquist v. Mauclet, supra,* in which this Court invalidated a state law preventing aliens from receiving state financial assistance for higher education. In *Nyquist* this Court expressly rejected the argument that because financial aid for education is not a basic necessity of life, the discriminatory state statute should not be subjected to strict judicial scrutiny. *Nyquist v. Mauclet, supra,* 432 U.S., at 8, n. 9.

[13]In *Foley*, only after first determining that state troopers fell within the *Sugarman* exception, this Court went on to note that "the police function is one where citizenship bears a rational relationship to the special demands of the particular position." *Foley v. Connelie, supra,* 435 U.S., at 300.

[14]Even groups which have not been held to constitute discrete and insular minorities, such as women and illegitimate children, are afforded a greater degree of judicial scrutiny of statutes that discriminate against them than a merely perfunctory judicial search for a rational basis behind the discrimination. *Califano v. Webster*, 430 U.S. 313, 316-17 (1977) (women); *Trimble v. Gordon*, 430 U.S. 762, 766-67 (1977) (illegitimate children). It would be doubly troubling if the standard for reviewing a suspect classification against aliens were less than that afforded other groups not recognized as discrete and insular minorities, and could even call in question the permanency of the somewhat heightened protection afforded such other groups.

Applying strict scrutiny to the initial inquiry — whether the affected positions (here probation officers) fall within the *Sugarman* exception — would also be appropriate for all the reasons that led this Court to first hold that classifications which discriminate against aliens are suspect. Despite the fact that aliens are productive and valuable members of our society,[15] they are excluded from the ballot, and therefore from the political process, and have been subjected to a long history of discrimination.

In California, aliens may not vote.[16] Therefore, they are unable to redress their grievances through the political process, and so need special protection. Also, unfortunately, California shares the sad history of the entire country of prejudice and discrimination against aliens. In *Castro v. State of California*, 2 Cal. 3d 223, 85 Cal. Rptr. 20, 466 P. 2d 244 (1970), the California Supreme Court chronicled some of the bigotry that surrounded passage of a state constitutional provision at the turn of the century requiring voters to pass an English literacy test. Included in the Court's description are tirades by state legislators and state court judges, among others, describing aliens as "inferior," "ignorant," "debased," "vicious," and "reckless." *Id.*, 2 Cal. 3d, at 230-31, nn. 11 and 14.

The outbreak of prejudice against aliens which occurred during the World Wars has already been recognized by this

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[15]"[W]e have often been described as 'a nation of immigrants.' " *Foley v. Connelie, supra*, 435 U.S., at 294. " 'Aliens like citizens pay taxes and may be called into the armed forces. . . . [A]liens may live within a state for many years, work in the state and contribute to the economic growth of the state.' [citations omitted]." *Graham v. Richardson, supra*, 403 U.S., at 376. "[Aliens'] contributions to the social and economic life of the country were self-evident, especially during the periods when the demand for human resources greatly exceeded the native supply." *In Re Griffiths, supra*, 413 U.S., at 719.

[16]Cal. Const. Art. II, § 2.

Court. The "frantic and overreactive days of the First World War when attitudes of parochialism and fear of the foreigner were the order of the day,"[17] were followed closely by wide-ranging efforts to exclude aliens from employment at the time of the Second World War.[18] Some of California's discriminatory statutes from the 1940's have already been the subject of landmark decisions by this Court. *Takahashi v. Fish Comm'n.*, 334 U.S. 410 (1948) (striking down a California statute which barred aliens from holding fishing licenses); *Oyama v. California*, 332 U.S. 633 (1948) (invalidating California's Alien Land Law, which prevented aliens from owning or leasing agricultural land).

Because aliens are excluded from the political process and have suffered a long history of discrimination, plaintiffs urge this Court to reaffirm its earlier holdings that aliens are a discrete and insular minority and to apply strict scrutiny to the County's claim that deputy probation officers fall within the *Sugarman* exception. Such an approach should stringently limit the reach of the *Sugarman* exception to a narrowly isolated group of vital, basic, symbolic government officers.

Unless the *Sugarman* exception is limited to a very narrow range of extraordinary public employment positions, that exception could swallow the rule that aliens have a right to work for a living in the "common occupations of the community," whether public or private. *Sugarman v. Dougall, supra*, 413 U.S., at 641. One out of every six persons in the nonagricultural workforce is employed by some governmental entity; the great majority work for state and local

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[17] *Ambach v. Norwick supra*, 441 U.S., at 82 (Blackmun, J., dissenting).

[18] *In Re Griffiths, supra*, 413 U.S., at 719 and n. 5.

governments.[19] More than 1.3 million aliens reside in California.[20] Given these figures, if the State of California's authority to exclude aliens from public employment is broadly interpreted, the efforts of hundreds of thousands of legally admitted, permanent resident aliens to find employment and to support themselves and their families would be devastated.[21]

Therefore, plaintiffs urge this Court to carefully scrutinize the County's claim in this case that probation officers fall within the *Sugarman* exception and to limit narrowly the definition of the class of public positions which do fall within that exception.

B. Section 1031(a) Violates the Equal Protection Rights of Aliens Because California Deputy Probation Officers, Unlike State Troopers and Public School Teachers, Do Not Fall Within the "Sugarman Exception."

In *Foley* and *Ambach* this Court held that state troopers and public school teachers fall within the *Sugarman* exception. Plaintiffs will first analyze the specific duties and

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[19]In May, 1981, of a total nonagricultural work force nationwide of approximately 91,860,000 people, 2,782,000 (3%) worked for the federal government and 13,572,000 (14.7%) worked for a state or local government. U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, June 1981, pp. 38, 45-46. The figures are similar in California, where in March of 1981, of a total nonagricultural wage and salary work force of approximately 10,037,300 people, 322,200 (3.2%) worked for the federal government and 1,444,400 (14.4%) worked for the state or a local governmental entity. California Department of Finance. *California Economic Indicators*, May 1981, p. 3.

[20]U.S. Department of Justice, Immigration and Naturalization Service, *1979 Annual Report of the Immigration and Naturalization Service*, Table 4, p. 19.

[21]Broad limitations on employment opportunities can "deprive aliens of the essential means of economic survival." *Nyquist v. Mauclet*, *supra*, 432 U.S., at 13 (Burger, C.J., dissenting).

shared characteristics of state troopers and public school teachers, concluding that both teachers and state troopers perform vital governmental functions, without intervening supervision by other members of the state's political community, can exercise extraordinary compulsory authority over the vast majority of the state's citizenry, and are potent symbols of America's shared values and traditions. Plaintiffs then compare the more limited tasks performed by probation officers in California, concluding that probation officers should not be grouped with state troopers and teachers as members, and governors, of the state's political community. The County has not carried, and cannot carry, its burden of showing that it has a compelling interest in including probation officers within the *Sugarman* exception.

1. Teachers and State Troopers Exercise Extraordinarily Important Governmental Powers, Without Direct Intervening Supervision, Over the Citizenry at Large, and Are Symbols of America's Shared Traditions and Values.

Public school teachers, who this Court held in *Ambach* may be required to apply for U.S. citizenship, fulfill " 'perhaps the most important function of state and local governments. . . . [Education] is required in the performance of our most basic public responsibilities. . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.' *Brown v. Board of Education*, 347 U.S. 483, 493, (1954)." *Ambach, supra*, 441 U.S., at 76-77.

Public school teachers fulfill this vital function in direct contact with their students, out of the presence of any other representatives of the political community. What happens on a day-to-day basis in the classroom is unsupervised and largely within the teacher's discretion. "Alone among em-

ployees of the system, teachers are in direct, day-to-day contact with students both in the classrooms and in the other varied activities of a modern school. . . . [T]eachers by necessity have wide discretion. . . ." *Ambach, supra,* 441 U.S., at 78.

Further, the authority of teachers extends to almost the entire population.[22] All American residents are compelled by state law to spend many years of their lives, for long periods of each school day, in attendance before, and under the control of, school teachers.

Moreover, public school teachers, regardless of what they may actually do each day during work hours, are symbols of America's shared values and are perceived as important purveyors of those values by action and example. "[A]uthorities have perceived public schools as an 'assimilative force' by which diverse and conflicting elements in our society are brought together on a broad but common ground. [citation omitted] These perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists. [citations omitted]." *Ambach, supra,* 441 U.S., at 77.

State troopers share many important characteristics with teachers. They too perform one of the most fundamental obligations of government — the protection of the citizenry by the enforcement of the laws. Specifically, they are charged with "the prevention and detection of crime, the apprehension of suspected criminals, investigation of suspect conduct, execution of warrants and have powers of search, seizure and arrest without a formal warrant under limited circumstances. In the course of carrying out these

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[22]In New York, more than 80% of all school children attended public school. *Ambach, supra,* 441 U.S., at 86 (Blackmun, J., dissenting).

responsibilities an officer is empowered by New York law to resort to lawful force, which may include the use of any weapon that he is required to carry while on duty." *Foley, supra*, 435 U.S., at 293. State troopers may also "invade the privacy of an individual in public places," "break down a door to enter a dwelling or other building in the execution of a warrant . . . or without a formal warrant in very limited circumstances," "stop vehicles traveling on public highways" and then "within limits, require a driver or passengers to disembark and even search them for weapons," and, of course, the state trooper may make arrests "without prior judicial authority, as when an officer observes a criminal act in progress or suspects that felonious activity is afoot." *Foley, supra*, 435 U.S., at 297-98. In short, the compulsory, forceful powers of state troopers are extraordinary, and draconian if not properly administered.

State troopers, like teachers, exercise their state powers in direct contact with the general population, out of the presence of any other representatives of the political community. What happens on a day-to-day basis on the streets is unsupervised and largely within the trooper's discretion. "[T]his country entrusts many of its most important policy responsibilities to these officers, the discretionary exercise of which can often more immediately affect the lives of citizens than even the ballot of a voter or the choice of a legislator." *Foley, supra*, 435 U.S., at 296. State troopers are "clothed with authority to exercise an almost infinite variety of discretionary powers." *Id.*, at 297.

Further, the authority of the state trooper, like that of the teacher, extends to the entire population, not just to a small group of people. Even though all citizens do not regularly come in contact with state troopers for extended periods of time, the "police presence is pervasive." *Foley*, 435 U.S., at 297. The police are visibly present in all communities,

and anyone who is out and about business in the community will see, regularly, the uniformed and armed police officer.

Moreover, state troopers, regardless of what they may actually do each day on the beat during work hours, are perceived as symbols of America's shared values and traditions and enforcers of America's shared laws. In short, the uniformed and armed policeman on the street is the ultimate symbol of the compulsory authority of the state.

Teachers and state troopers, therefore, share certain characteristics which place them "at the heart of our political institutions." *Id.*, at 296. They perform vital governmental functions, without intervening supervision by other members of the political community; they exercise their authority in direct contact with the vast majority of the state's population; and they are perceived as potent symbols of the American way of life and our shared values and traditions.

2. California's Deputy Probation Officers Do Not Share the Characteristics of Teachers and State Troopers.

Deputy probation officers,[23] unlike teachers and state troopers, are authorized to perform only limited, basically ministerial duties.[24] The population they serve is small, and

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[23]Deputy probation officers and regular probation officers perform the same functions. J.A. 93, n. 10. Therefore, no distinction is made in the analysis above between the two positions.

[24]The record in this case concerning what deputy probation officers actually do with their time during the work day, as opposed to what they are authorized by law to do, is limited. The parties stipulated that the members of the three judge court, all of whom had extensive experience as California state trial court judges, could take judicial notice of the duties of probation officers based on their own observations and experiences. J.A. 62. In addition, the court took judicial notice of statutes which describe some of the powers of probation officers in California, and the parties stipulated to one fact about probation officers: that they do not carry firearms. J.A. 77, n. 2. After this Court remanded this case for reconsideration in light of *Foley v. Connelie*, plaintiffs moved for leave to do discovery, in order to augment the record to show what probation officers actually do, so that a more thorough comparison with this Court's decision in *Foley* could be made. That motion was denied. J.A. 73.

comes under their control only after the police, judges, and juries have first determined that they are in need of supervision. Further, probation officers are not important symbolic figures.

While plaintiffs do not denigrate the work of probation officers, those officers simply do not perform vital functions that go to the heart of a representative government. Probation officers merely do investigations, and then make reports and offer suggestions on sentencing, probation, and placement of juveniles to those government officers who are the ones who ultimately do exercise the state's power of governance — judges. J.A. 62. Thus, their duties in relation to the judicial system are much less important than are counsel's. Yet, in *In Re Griffiths, supra*, this Court held that aliens may be lawyers, even though lawyers act as officers of the court, with authority to sign writs and subpoenas, administer oaths, take depositions, and acknowledge deeds. *Id.*, 413 U.S., at 723.

Further, probation officers' powers of arrest and detention are severely limited both as to the conditions under which they may detain someone, and as to the very small group of people whom they may detain. Probation officers may only arrest probationers under their jurisdiction, and then only for the purpose of bringing them before the court, where it is determined whether they should be held or released.[25] Probation officers may detain juveniles only for short periods of time in emergency situations.[26]

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[25]J.A. 85. Cal. Penal Code § 1203.2. The State has given limited powers of arrest to other people, but does not designate them as peace officers or require that they be citizens. For example, security officers at private educational institutions may make arrests but are expressly excluded from the peace officer definition. Cal. Penal Code § 830.7.

[26]Probation officers must immediately release minors into the custody of their parents, guardian, or other responsible relative, unless there are extraordinary circumstances, such as the minor being subjected to neglect, cruelty, depravity, or physical abuse at home or being physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality. Cal. Welf. & Inst. Code § 309. Even in such emergency circumstances, the probation officer must file a petition with the court within forty-eight hours, and hearing must be held on that

The County in its Opening Brief makes much of the role of the probation officer as teacher, counselor and role model. However, the very reports cited to by the County reflect that generally probation officers spend only about one-quarter to one-third of their time on direct supervision of probationers. Because of the weight of probation caseloads, which exceed a hundred probationers per officer, probation officers average less than one personal contact and one telephone contact each month with each probationer.[27] Such perfunctory contact, during a limited term of probation, is not comparable to the public school teachers' contact with school children for long hours over more than a decade of the students' lives. Probation officers barely have time to find out where their probationers are and whether they are having job problems; there is no time for teaching civics, or even for getting to know the probationer well enough to set an example.

Probation officers are functionaries. They do investigations, file reports, and make suggestions. They are not like police officers, the enforcers and embodiment of the ultimate power of the government over all citizens. Nor are they like teachers. Probation officers try to keep track of their probationers. They do not, like teachers, spend years instructing and molding the minds of the people under their control.

Probation officers differ from teachers and state troopers in another very significant way. They do not exercise their authority over the population at large, without intervening supervision by other vital members of the political community. By definition, the probation officer's clientele is

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[27]U.S. Dept. of Justice, Nat'l Inst. of Law Enforcement and Criminal Justice, *Critical Issues in Adult Probation: Issues in Probation Management* (September 1979), at 88, 317-33.

limited to people whom the police, judges, and juries, in exercise of their intervening authority as governors of the citizenry, have screened and determined to be in need of custody and supervision. Thus the rightful authority of the state is exercised in the process of selecting who is to end up under the (usually perfunctory) supervision of a probation officer. Of course, then, the number of people subject to the authority of probation officers is also very small. Probation officers simply do not exercise authority over the population at large. The lives of the vast majority of Americans are never touched by the probation officer. Teachers and the police touch nearly everyone's life.

Finally, probation officers differ from state troopers and teachers because they are not traditional symbols of American government, values, and shared traditions. "The cop on the corner" and the "little red school house" are long-standing symbols of American life. However, American citizens probably have no clearer image of probation officers than they have of welfare clerks, court clerks, and myriad other government functionaries. The jobs performed by such people are of course important, but probation officers and other ministerial functionaries do not govern by exercising powers that go to the heart of our political institutions and do not stand as symbolic embodiments of the American way of life.

In summary, probation officers do not belong in the same class as state troopers and teachers for purposes of determining whether a state statute, which requires deputy probation officers to be citizens, can survive close judicial scrutiny under the Fourteenth Amendment. Because the County has not shown, and cannot show, that the requirement that probation officers be citizens is compelled by the state's interest in preserving its political community, the

only remaining issue is whether the County has shown that there is any other compelling basis for its discrimination against aliens.

3. There Is No Other Compelling Reason for Requiring Deputy Probation Officers, Who Do Not Fall Within the "Sugarman Exception," to Be Citizens.

The County offers no argument in support of the citizenship requirement, other than the desire to preserve its political community. That is understandable, as any other possible rationale would fall of its own weight.

This Court has already rejected arguments that citizenship is the only way to ensure the loyalty of employees; an oath of allegiance is adequate.[28] *In Re Griffiths, supra*, 413 U.S., at 726, n. 18.

Nor does there appear to be any rational relationship between citizenship and basic job qualifications, which can be, and are, better measured by educational requirements,[29] pre-employment testing,[30] and training.

The citizenship requirement is particularly irrational to the extent that it excludes from employment even persons

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[28]All of the plaintiffs in this case have been willing to take an oath to support the State and Federal Constitutions. J.A. 41.

[29]California Government Code Section 1031(e) requires all peace officers to be high school graduates. Plaintiff Chavez-Salido has a B.A. degree from California State College at Long Beach. J.A. 19. Plaintiff Ybarra has an M.A. from the University of California at Los Angeles. J.A. 21. Plaintiff Bohorquez has a B.A. from the University of California at Los Angeles. J.A. 23.

[30]Chavez-Salido received a 95 on his pre-employmemt test for Deputy Probation Officer II, Spanish-speaking. J.A. 20. Ybarra received an 88 on the Deputy Probation Officer Trainee examination, and passed the Deputy Probation Officer II examination with a score of 70. J.A. 22. Bohorquez was informed at the end of the oral portion of his pre-employment examination that "despite his score on the oral interview" he could not be hired because he was not a citizen. J.A. 23-24. He was later informed by the County that he failed the oral interview and that it would be useless to appeal his score because he did not meet the citizenship requirement. J.A. 24.

who have applied for citizenship, such as plaintiff Chavez-Salido, who had a Petition for Naturalization pending when he was denied employment, and who is now a citizen. J.A. 21.

In fact, the citizenship requirement is counter-productive, and denies the state access to probation officer candidates who, because of their background, are exceptionally well qualified. For example, plaintiff Chavez-Salido applied for the position of Deputy Probation Officer II, Spanish-speaking. J.A. 19. As a native of Mexico (J.A. 19), he is a native Spanish-speaker. Thus he is especially well qualified[31] to be a Deputy Probation Officer, Spanish-speaking, since that position obviously would include supervising other native Spanish-speakers. The County's exclusion from its probation officer staff of native speakers of languages other than English is counter-productive in a state in which the need for Spanish-speaking probation officers is evidenced by the very existence of the jobs and in which it has been estimated that over 1.6 million people, with Spanish surnames, speak Spanish as a mother tongue, not English.[32]

The legislative history of Section 1031(a) offers no suggestion of any rationale for the citizenship requirement. In 1851 the California legislature first created the "peace officer" status for sheriffs, policemen, marshals, and constables.[33] None were required to be citizens. During the

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[31]Chavez-Salido's other employment qualifications were excellent. Footnotes 29 and 30, *supra*.

[32]U.S. Bureau of the Census, Census of Population: 1970, Subject Reports PC (2)-1D, Persons of Spanish Surname, p. 7.

[33]One reason for the erratic expansion of the "peace officer" definition which has been suggested — successful lobbying by employees who wanted to be included in the definition in order to receive the generous fringe benefits given "peace officers" — of course provides no support for discrimination against aliens. *Hetherington v. State Personnel Bd.*, 82 Cal.App. 3d 582, 600, 147 Cal. Rptr. 300 (1978) (Reynoso, J., dissenting).

next one hundred and ten years, in dozens of subsequent enactments, the legislature added more positions to the "peace officer" list,[34] but did not require any to be citizens. J.A. 79. Then, as the three judge court noted below: "[I]n 1961, in one fell swoop, the legislature passed Government Code Section 1031 which applied the mandatory citizenship requirement to all of the positions on the list. We are cited no legislative history or legislative findings which supply any basis or rationale for this broad new citizenship requirement." J.A. 79-80. Nor could the California State Attorney General find any rationale in the legislative history for the citizenship requirement. The Attorney General stated in a 1970 Opinion, which indicated that Section 1031(a)'s citizenship requirement was unconstitutional: "[P]rior to 1961, there was no general requirement of citizenship to be a peace officer. We are aware of no change that occurred that would justify the change at that date." 53 Ops. Cal. Atty. Gen. 63, 68 (1970).

In short, because deputy probation officers do not fall within the *Sugarman* exception, the County could not and did not offer any other compelling basis to support the requirement that deputy probation officers be citizens.

C. Section 1031(a) Violates the Equal Protection Rights of Aliens Because Its Citizenship Requirement Is Not Precisely Crafted and Narrowly Written.

As argued above, Section 1031(a) is unconstitutional as applied to deputy probation officers. In addition, the statute is unconstitutional in relation to all "peace officer" posi-

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[34]During the pendency of this action, the legislature has continued to make more changes in the list of peace officers. The list as of the date of the first opinion below (1977) can be found at J.A. 58-60, n. 22. Substantial additions, and a few deletions, were made by the legislature before the second opinion was written below in 1980. They are listed at J.A. 80-81, n. 6. The current list of jobs classified as "peace officers" in California appears at footnote 42, *infra*.

tions, because it does not comply with the requirement of *Sugarman v. Dougall, supra,* that statutes which discriminate against aliens in public employment be narrowly written and precisely crafted, in light of the state's acknowledged purpose, to apply only to positions for which citizenship is a constitutionally valid prerequisite.

This Court struck down a New York statute in *Sugarman* which required all employees in New York's competitive civil service class to be United States citizens. In reaching that conclusion, this Court did not analyze at all any of the job classifications in which the named plaintiffs sought employment. Instead this Court analyzed New York's total statutory and constitutional scheme for limiting certain public employment positions to citizens, and struck down that entire section of the code which prevented plaintiffs from obtaining employment. This Court invalidated that section not because the statute as applied to plaintiffs was unconstitutional, but because the full sweep of the statute was too extensive, both in its own terms, and when considered in conjunction with other provisions concerning employment of aliens.

This Court stated in *Sugarman* that state statutes which discriminate against aliens must be precisely drawn and narrowly written, even if the state's asserted purpose is to preserve its "political community" for citizens:

> "We recognize a State's interest in establishing its own form of government, and in limiting participation in that government to those who are within 'the basic conception of a political community.' *Dunn v. Blumstein,* 405 U.S. 330, 344 (1972). We recognize, too, the State's broad power to define its political community. But in seeking to achieve this substantial purpose, with discrimination against aliens, *the means the State employs must be precisely drawn in light of*

> *the acknowledged purpose.*" *Sugarman v. Dougall, supra,* 413 U.S., at 642-43 (emphasis added).

See also Examining Board v. Flores de Otero, supra, 426 U.S., at 605, in which this Court stated that in evaluating classifications which discriminate against aliens "an inquiry must be made whether the means adopted are necessary and precisely drawn." *Accord Nyquist v. Mauclet, supra,* 432 U.S., at 7. *Foley v. Connelie, supra,* 435 U.S., at 296-97, n. 5:

> "This is not to say, of course, that a State may accomplish this end [restricting to U.S. citizens positions which involve discretionary decision-making, or execution of policy, which substantially affect members of the political community] with a citizenship restriction that 'sweeps indiscriminately,' *Dougall,* 413 U.S., at 643, without regard to the differences in the positions involved."

Therefore, regardless of the validity of Section 1031(a) as applied to deputy probation officers, the statute must still be declared unconstitutional if it is not precisely tailored to the state's legitimate interest. To this end, the state's statutory scheme must be subjected to "close judicial scrutiny." *Sugarman, supra,* 413 U.S., at 643.

To determine whether Section 1031(a) is precisely drawn in light of the state's interest in preserving its political community, *Sugarman* directs that Section 1031(a) and all other sections of California law which limit the employment opportunities of aliens be examined together, to determine whether the whole scheme is precisely tailored.

> "We thus have constitutional provisions and a number of statutes that, together, constitute New York's scheme for the exclusion of aliens from public employment. The present case concerns only § 53 of the Civil Service Law. The section's constitutionality,

> however, is to be judged in the context of the State's broad statutory framework and the justifications the State presents." *Sugarman, supra*, 413 U.S., at 640.

In *Sugarman* this Court found that New York Civil Service Law, Section 53 applied a citizenship requirement to "various positions in nearly the full range of work tasks, that is, all the way from the menial to the policy making." *Id.*, at 640. This Court also examined other New York statutory and constitutional provisions, which were not directly in issue in *Sugarman*, and noted that legislative appointees and employees, various officers appointed by the Governor, and teachers were not required to be citizens. Thus, New York's total statutory and constitutional scheme requiring public employees to be citizens was both overly inclusive and inexplicably underinclusive.

> "[T]he State's broad prohibition of the employment of aliens applies to many positions with respect to which the State's proffered justification has little, if any, relationship. At the same time, the prohibition has no application at all to positions that would seem naturally to fall within the State's asserted purpose. Our standard of review of statutes that treat aliens differently from citizens requires a greater degree of precision." *Sugarman, supra*, 413 U.S., at 642.

California's statutory scheme for limiting public employment to citizens is equally imprecise, in violation of the Fourteenth Amendment. Section 1031(a), the specific statutory section challenged here, applies to many job categories which are obviously not properly limited to citizens. In addition, many other sections of California law inappropriately require citizenship for a wide range of public jobs. At the same time, citizenship is not required for other public employment positions for which the requirement would arguably be permissible.

Beginning with an examination of Section 1031(a), that section requires all "peace officers" to be citizens. The more than seventy job categories which are defined as "peace officers" are listed in a series of sections of the California Penal Code. The "peace officers" category includes policemen, sheriffs,[35] and members of the State Highway Patrol,[36] as might be expected. Also included, obviously inappropriately, are voluntary fire wardens,[37] investigators of the Board of Dental Examiners,[38] local park rangers,[39] messengers in the Treasurer's office,[40] and employees of the Department of Parks and Recreation,[41] to name a few.[42] Thus the requirement of Section 1031(a) that "peace officers" be citizens is overly inclusive.

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[35]Cal. Penal Code Section 830.1(a).
[36]Cal. Penal Code Section 830.2(a).
[37]Cal. Penal Code Section 830.3(c).
[38]Cal. Penal Code Section 830.3(b).
[39]Cal. Penal Code Section 830.31(b).
[40]Cal. Penal Code Section 830.4(d).
[41]Cal. Penal Code Section 830.2(h).
[42]The following is a list of all "peace officers" as presently defined: Sheriff; undersheriff; deputy sheriff; policeman; constable; marshal or deputy marshal of municipal court; and inspector employed by district attorney. Cal. Penal Code § 830.1(a). Members of California Highway Patrol, California State Police Division, California National Guard, University of California Police Department, California State University and College Police Department, Law Enforcement Liaison Unit of Department of Corrections, Wildlife Protection Branch of the Department of Fish and Game; and employees of Department of Parks and Recreation. Cal. Penal Code §§ 830.2(a)-(h). Certain employees of the Department of Alcoholic Beverage Control, Division of Investigation of the Department of Consumer Affairs; investigators of the Board of Medical Quality Assurance and of the Board of Dental Examiners; certain employees of the Department of Forestry; voluntary fire wardens; certain employees of the Department of Motor Vehicles and investigators of the California Horse Racing Board; the State Fire Marshal and assistant or deputy state fire marshals; certain inspectors of the Food and Drug Section; investigators of the Division of Labor Standards Enforcement and State Departments of Health Services, Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs, and the Office of Statewide Health Planning and Development; marshals and police appointed by the Division of Parks and Recreation; the Chief

(footnote continued on following page)

Other state statutes, not directly in issue here, require that an even more bewildering array of jobs be reserved for citizens. For example, certain local "officers," including county license collectors, coroners, surveyors, veterinarians, fish and game wardens, librarians, health officers, administrative officers, and road commissioners, among others, must be U.S. citizens.[43] In addition, holders of certain "civil offices," which are filled by election or appointment, must be U.S. citizens.[44] These offices include three recording clerks of the Department of State; one clerk of the Superintendent of Public Instruction; certain port wardens and pilots; members of various State Boards, in-

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and investigators of Bureau of Fraudulent Claims of Department of Insurance. Cal. Penal Code §§ 830.3(a)-(k). State, city, county and district arson investigators; local park rangers; community college police; welfare fraud and child support investigators; coroners and deputy coroners; San Francisco Bay Area Rapid Transit District Police Department members; county, city, or district harbor police; and municipal utility district security officers. Cal. Penal Code §§ 830.31(a)-(h). Security officers of California State Police Division; Sergeant at Arms of each house of the State legislature; bailiffs of the Supreme Court and courts of appeal; guards and messengers of Treasurer's office; state hospital officers; railroad policemen; school district security guards; Los Angeles County security officers; local housing authority patrol officers; local transit police officers; and city and county airport officers. Cal. Penal Code §§ 830.4(a)-(k). Parole, probation, and deputy probation officers; correctional officers; certain employees of the Departments of Corrections, Youth Authority, and Board of Prison Terms; employees having custody of wards in institutions operated by a probation department; and probation department transportation officers. Cal. Penal Code §§ 830.5(a) and (b). Persons deputized or appointed as a reserve or auxiliary sheriff, city policeman, deputy sheriff, reserve police officer of a regional park district, or deputy of the Department of Fish and Game. Cal. Penal Code § 830.6(a).

[43]California Government Code Section 24000 classifies the jobs listed above in the text as county officers. California Government Code Section 24001 then requires county or district officers to be registered voters. In turn, the California Constitution, Article II, Section 2 denies aliens the right to vote.

[44]California Government Code Section 1020 requires "civil officers" to be state citizens. In turn, California Government Code Sections 241 and 242 exclude aliens from state citizenships.

cluding the State Boards of Agriculture, Equalization and Education; and the State Supreme Court librarian.[45]

The state also requires citizenship of directors of District Agricultural Associations;[46] these associations hold fairs and expositions and operate and maintain cultural and recreational facilities.[47] The state requires members of the California Advisory Board of Home Furnishings to be citizens.[48] It also requires humane officers employed by humane societies to be citizens.[49]

As in *Sugarman*, the specific statute here challenged limits too many positions to citizens. In addition, as in *Sugarman*, the state has impermissibly limited many other positions to citizens, evidencing that the state has not carefully crafted its discriminatory statutes, as required by the Fourteenth Amendment, in the most precise manner possible. Finally, the state has not sought to limit some job categories, that do fall squarely within the political community, to citizens. As in *Sugarman*, no statute requires public school teachers to be citizens.[50]

Thus, Section 1031(a) violates the Fourteenth Amendment rights of aliens because the state has not precisely crafted and tailored the statute, and the rest of California's laws, to meet the state's legitimate, but very narrowly restricted, interest in preserving its political community. The

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[45]Cal. Gov't Code §1001.
[46]Cal. Agr. Code § 3956.
[47]Cal. Agr. Code § 3951.
[48]Cal. Bus. & Prof. Code § 19035.2.
[49]Cal. Civ. Code § 607f.
[50]The absence of a citizenship requirement for teachers may be due to the fact that the State Attorney General, over ten years ago, opined that citizenship requirements for teachers, for peace officers as then defined by state law, and for many other government positions violated the Fourteenth Amendment. 53 Ops. Cal. Atty. Gen. 63 (1970).

County has not carried its burden of showing a compelling interest in the full and broad sweep of Section 1031(a)'s citizenship requirement.

D. Plaintiffs May Challenge the Excessive Reach of Section 1031(a).

The County challenges plaintiffs' "standing" to object to the overly broad and imprecise nature of the citizenship requirement of Section 1031(a). It asserts that plaintiffs may attack the citizenship requirement only as it applies to them as applicants for deputy probation officer positions.

The County misconstrues plaintiffs' position. Plaintiffs are not challenging Section 1031(a) for "overbreadth," in the sense that word is used to describe vague and broad statutes which restrict First Amendment rights. Plaintiffs are not asserting that Section 1031(a) is unconstitutional because it is vague, and may in the future be interpreted by the state in a way which would restrict other people's constitutional rights. Rather, plaintiffs' assertion that Section 1031(a)'s citizenship requirement applies to too many job classifications is simply a component of plaintiffs' equal protection analysis, a component which occurs in all cases attacking suspect classifications. As this Court noted in *Sugarman*, to sustain a suspect classification in the face of a Fourteenth Amendment challenge, the defendant must first show that there is a compelling governmental purpose in the discrimination and then must establish that the statute is also "precisely drawn in light of the acknowledged purpose." *Sugarman, supra*, 413 U.S., at 643. In all equal protection cases, defendants must show that the statute is

narrowly drawn to further the interests of the state.[51] Here plaintiffs attack a statute which provides that all peace officers must be citizens. The County must show a compelling interest in the discrimination and in addition must show that the statute is narrowly drawn to fulfill that interest. There really is no question of plaintiffs' "standing" to raise the issue of the statute's reach, as that issue is inherent in the equal protection challenge.

Thus, in *Sugarman*, this Court examined the full reach of the citizenship requirement imposed by the State of New York, and struck down the entire citizenship requirement. This Court did so without any analysis of the particular jobs the plaintiffs applied for and without any discussion of the "standing" of plaintiffs to assert as part of their equal protection challenge that the citizenship requirement was not precisely drawn.

The *Sugarman* approach — examining whether a suspect classification is precisely drawn, regardless of the application of the statute to plaintiffs — was recently employed by this Court in another challenge to an excessively broad alienage requirement for public employment. In *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976), this Court struck down a federal civil service regulation requiring all civil service employees to be U.S. citizens. In *Hampton*, as in *Sugarman*, there is no discussion of the particular position to which the plaintiff sought appointment.

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[51]*See also, Trimble v. Gordon*, 430 U.S. 762 (1977), in which this Court stated that statutes which discriminate against illegitimate children must be "carefully tuned" (*Id.*, at 772) to withstand an equal protection challenge. In *Trimble*, this Court held that a statute which provided that illegitimate children could inherit by intestate succession from their mothers, but not their fathers, violated equal protection because: "The reach of the statute extends well beyond the asserted purposes." *Id.*, at 772-73.

Whenever plaintiffs challenge a provision of law which is alleged to discriminate against a discrete and insular minority, plaintiffs need only meet the minimal requirements for standing of Article III of the Constitution of the United States. If they do, defendant must bear the burden of showing that the statute is narrowly drawn to fulfill the compelling governmental interest, regardless of whether the defendant could have fulfilled the governmental interest in a constitutionally acceptable way by drafting a more narrow and precise statute applicable only to individuals in the same position as plaintiffs.

Even if plaintiffs' relationship to Section 1031(a) is analyzed as an issue of standing, there is no question that plaintiffs do have standing. As this Court held in *Baker v. Carr*, 369 U.S. 186 (1962), the gist of the question of standing is whether the plaintiffs have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions. . . ." *Id.*, at 204. There is no question that here plaintiffs have a personal stake. They sought jobs with the County as "peace officers," and were denied jobs because of Section 1031(a), which provides that all peace officers must be citizens. If plaintiffs prevail on the merits, they are entitled to jobs with the County if they still want them, and to collect their outstanding damage awards for back pay.

Therefore, the question is not whether there is a case or controversy, but instead whether there is some policy reason why it would be prudent to limit plaintiffs' challenge. As this Court noted recently in *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), the minimal Article III requirements for a "case or controversy" are simply that the "plaintiff must show that he personally has suffered

some actual or threatened injury as a result of the putatively illegal conduct of the defendant. [citations omitted]." *Id.*, 441 U.S., at 99. Any other requirement, which may be denominated as a standing requirement, is really a common sense, prudential limitation which a court may impose in order to ensure that cases which really should not be decided, are not. Prudential principles are used by the judiciary "to avoid deciding questions of broad social import where no individual rights would be vindicated and to limit access to the federal courts to those litigants best suited to assert a particular claim." *Id.*, at 99-100.

The County, in its Opening Brief, cites *Broadrick v. Oklahoma*, 413 U.S. 601 (1973) and *United States v. Raines*, 362 U.S. 17 (1960),[52] and argues that plaintiffs lack standing because they challenge the application of Section 1031(a) to other positions for which they did not apply, *i.e.*, because they seem to be asserting the rights of third parties. However, prudential considerations do not necessarily prevent parties from pointing out, in support of their case, the unconstitutionality of a challenged statute when applied to others:

> "Some statements might suggest a simple rule that a litigant lacks standing to assert the rights of others. Frequent instances in which courts have considered the impact of challenged conduct or their own decision on others, however, show that there is no simple rule; instead reasons must be sought for determining whether to consider the interests of nonparties. These reasons at times may lie in Article III, but often are drawn instead from concerns simply of good judicial policy.

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[52]Since the *Sugarman* decision was issued on the same day as this Court's decision in *Broadrick* and more than a decade after *Raines*, the *Sugarman* approach to overly broad statutes, which are subject to Fourteenth Amendment equal protection challenges, is consistent with those two decisions and not limited in any way by them.

> Although the conclusion is commonly expressed in terms of 'standing,' finally, it must be noted that most of the decisions do not involve the right of the litigant to be in court. On the contrary, the question commonly arises in defining the extent of the issues that a court will decide at the behest of a party who is quite properly in court for some purposes." Wright, Miller & Cooper, *Federal Practice and Procedure*: Jurisdiction § 3531, p. 205. (footnote omitted).

In this case, there are no compelling prudential reasons not to look at the entire sweep of Section 1031(a). It has been suggested that prudential limits should be imposed when there is a "best plaintiff" who might raise the issue in a better context than the plaintiff before the court.[53] However, it is hard to imagine who would be a better plaintiff. Perhaps an alien who sought a position as a messenger in the State Treasury Department or as a local fire warden could file suit, and arguably would present in some ways a more outrageous example of discrimination against aliens. However, there is no reason to believe that such a plaintiff would raise the issue of the excessive reach and imprecise nature of the alienage classification any more concretely or fully than do the plaintiffs before the Court.

On the other hand, there are good reasons not to impose prudential limits on plaintiffs' claim that Section 1031(a) is unconstitutional as applied to the full range of job classifications defined as "peace officers." If these plaintiffs are limited to challenging the statute only as applied to

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[53]*See* Wright, Miller & Cooper, *Federal Practice and Procedure*, *supra*, at 212. However, in *Orr v. Orr*, 440 U.S. 268 (1979) this Court held that a state statute which provided that husbands could be made to pay alimony, but that wives could not, violated equal protection. In reaching that conclusion, this Court expressly rejected the wife's argument that the only proper plaintiff would be a husband who himself sought alimony, which her husband did not.

probation officers, then another alien who is denied employment with, for example, the Department of Parks and Recreation would have to file another suit and would also have to limit his suit to challenging the statute as applied to him. Then an alien denied employment as a local park ranger would have to file a separate suit, limited to the application of the citizenship requirement to local park rangers, etc. The filing of more than seventy separate individual suits, each challenging the same citizenship requirement in Section 1031(a) as applied to more than seventy different jobs, would be a useless waste of litigant and judicial time if Section 1031(a) is overbroad.

This Court has recognized that prudential limits on standing should not be imposed if the result is only to induce repetitive litigation. In *Craig v. Boren*, 429 U.S. 190 (1976) this Court permitted beer retailers to challenge a statute which allowed minor females, but not minor males, to buy beer; the retailers' claim was based on the ground that the statute discriminated against minor males. This Court addressed the merits of the suit, noting that to refuse to hear the case because of a prudential standing limitation "in order to await the initiation of a new challenge to the statute [by a minor male] would be impermissibly to foster repetitive and time-consuming litigation under the guise of caution and prudence." *Id.*, at 194.

If Section 1031(a) is overbroad there is no point in avoiding the issue on the ground of standing. Plaintiffs have a direct stake in this case which satisfies the requirements of Article III. There are good prudential reasons for examining the entire scope of the citizenship requirement, consistent with *Sugarman*. There is no good reason not to do so.

III.
CONCLUSION.

The County has failed to carry its burden of showing that Section 1031(a) is supported by a compelling governmental interest in requiring all "peace officers," including deputy probation officers, to be citizens. Thus Section 1031(a) violates the Fourteenth Amendment rights of aliens to the equal protection of the laws.

For the reasons stated above, the order and judgment below should be affirmed.

Respectfully submitted,

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